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DEPARTMENT OF COMMERCE

International Trade Administration

[A-351-840]

Certain Orange Juice from Brazil: Preliminary Results of Antidumping Duty Administrative Review and Preliminary No Shipment Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: In response to a request by the petitioners and three producers/exporters of the subject merchandise, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain orange juice (OJ) from Brazil with respect to four producers/exporters of the subject merchandise to the United States. This is the fifth period of review (POR), covering March 1, 2010, through February 28, 2011.

We have preliminarily determined that sales to the United States have been made below normal value (NV), and, therefore, are subject to antidumping duties. If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

EFFECTIVE DATE: [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse or Hector Rodriguez, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6345 or (202) 482-0629, respectively.

## SUPPLEMENTARY INFORMATION:

Background

In March 2006, the Department published in the Federal Register an antidumping duty order on OJ from Brazil.<sup>1</sup> Subsequently, on March 1, 2011, the Department published in the Federal Register a notice of opportunity to request an administrative review of the antidumping duty order on OJ from Brazil for the period March 1, 2010, through February 28, 2011.<sup>2</sup>

In accordance with 19 CFR 351.213(b)(2), in March 2011, the Department received requests to conduct an administrative review of the antidumping duty order on OJ from Brazil from three producers/exporters of the subject merchandise: Fischer S.A. Comercio, Industria, and Agricultura (Fischer); Louis Dreyfus Commodities Agroindustrial S.A. (Louis Dreyfus); and Sucocitríco Cutrale, S.A. (Cutrale). In its request for review, Louis Dreyfus claimed that it is the successor-in-interest to a former producer/exporter of OJ, Coinbra Frutesp S.A (Coinbra Frutesp).

In accordance with 19 CFR 351.213(b)(1), also in March 2011, the Department received requests to conduct an administrative review for Cutrale and Fischer from the petitioners (Florida Citrus Mutual and Citrus World, Inc.) and Southern Gardens Citrus Processing Corporation (Southern Gardens), a domestic interested party. Additionally, in March 2011, Southern Gardens requested that the Department also conduct an administrative review for Coinbra Frutesp and Montecitrus Trading S.A. (Montecitrus).

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<sup>1</sup> See Antidumping Duty Order: Certain Orange Juice from Brazil, 71 FR 12183 (Mar. 9, 2006) (OJ Order).

<sup>2</sup> See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review, 76 FR 11197 (Mar. 1, 2011).

In April 2011, the Department initiated an administrative review for all five companies (i.e., Cutrale, Coinbra Frutesp, Fischer, Louis Dreyfus, and Montecitrus).<sup>3</sup>

In May 2011, we solicited information from Louis Dreyfus regarding its claim that it is the successor-in-interest to Coinbra Frutesp. Louis Dreyfus supplied this information in the same month. Also in May 2011, we received a statement from Montecitrus that it had no shipments of subject merchandise to the United States during the POR, and we issued questionnaires to Cutrale, Fischer, and Louis Dreyfus.

In May and June 2011, we received responses to section A of the Department's questionnaire (i.e., the section related to general information), as well as responses to sections B and C of the questionnaire (i.e., the sections covering sales in the home market and United States) from Cutrale, Fischer, and Louis Dreyfus. We also received responses from Cutrale and Fischer to section D of the questionnaire (i.e., the section covering cost of production (COP) and constructed value (CV)) in June 2011.

In July 2011, the petitioners filed a company-specific sales-below-cost allegation for Louis Dreyfus. The Department initiated a sales-below-cost investigation for Louis Dreyfus in this month, and we instructed Louis Dreyfus to respond to section D of the Department's questionnaire. See the July 29, 2011, memorandum from the team to James Maeder entitled, "The Petitioners' Allegation of Sales Below the Cost of Production for Louis Dreyfus Commodities Agroindustrial S.A." (Louis Dreyfus Cost Investigation Memo). In August 2011, we received Louis Dreyfus' response to section D of the questionnaire.

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<sup>3</sup> See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 76 FR 23546 (Apr. 27, 2011) (Initiation Notice).

From August 2011 through March 2012, we issued supplemental sales and cost questionnaires to Cutrale, Fischer, and Louis Dreyfus. We also issued a supplemental successor-in-interest questionnaire to Louis Dreyfus in August 2011. We received responses to these supplemental questionnaires from September 2011 through March 2012.

On October 21, 2011, the Department extended the deadline for the preliminary results of this review until no later than March 30, 2012.<sup>4</sup>

On March 23, 2012, the petitioners filed a targeted dumping allegation against Cutrale and requested that the Department consider this allegation in the event that it determines to apply in this administrative review the Final Modification dumping margin calculation methodology it published on February 14, 2012.<sup>5,6</sup> Cutrale filed a response to the petitioners' targeting dumping allegation on March 26, 2012.

### Scope of the Order

The scope of this order includes certain orange juice for transport and/or further manufacturing, produced in two different forms: (1) frozen orange juice in a highly concentrated form, sometimes referred to as frozen concentrated orange juice for manufacture (FCOJM); and (2) pasteurized single-strength orange juice which has not been concentrated, referred to as not-from-concentrate (NFC). At the time of the filing of the petition, there was an existing antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. See

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<sup>4</sup> See Certain Orange Juice from Brazil: Notice of Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review, 76 FR 65496, 65497 (Oct. 21, 2011).

<sup>5</sup> See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings: Final Modification, 77 FR 8101 (Feb. 14, 2012). (Final Modification).

<sup>6</sup> We note that we did not apply the Final Modification dumping margin calculation methodology for purposes of these preliminary results. Per the Final Modification, the new methodology will be applied in reviews for which the preliminary results are scheduled to be issued more than 60 days after the date of publication of the Final Modification, (i.e., April 16, 2012).

Antidumping Duty Order; Frozen Concentrated Orange Juice from Brazil, 52 FR 16426 (May 5, 1987). Therefore, the scope of this order with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre-existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada, Coinbra Frutesp,<sup>7</sup> Cutrale, Fischer, and Montecitrus.

Excluded from the scope of the order are reconstituted orange juice and frozen concentrated orange juice for retail (FCOJR). Reconstituted orange juice is produced through further manufacture of FCOJM, by adding water, oils and essences to the orange juice concentrate. FCOJR is concentrated orange juice, typically at 42 Brix, in a frozen state, packed in retail-sized containers ready for sale to consumers. FCOJR, a finished consumer product, is produced through further manufacture of FCOJM, a bulk manufacturer's product.

The subject merchandise is currently classifiable under subheadings 2009.11.00, 2009.12.25, 2009.12.45, and 2009.19.00 of the Harmonized Tariff Schedule of the United States (HTSUS). These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive. Rather, the written description of the scope of the order is dispositive.

#### Successor-in-Interest

In making a normal successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. See Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan,

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<sup>7</sup> As discussed below, we preliminarily find that Louis Dreyfus is the successor-in-interest to Coinbra Frutesp. See the "Successor-in Interest" section of this notice.

67 FR 58 (Jan. 2, 2002), and Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review, 57 FR 20460 (May 13, 1992). Although no one of these factors is dispositive, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor. See Industrial Phosphoric Acid from Israel; Final Results of Antidumping Duty Changed Circumstances Review, 59 FR 6944 (Feb. 14, 1994); and Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil, 71 FR 2183 (Jan. 13, 2006).

As noted above, in its request for a review, Louis Dreyfus claimed that it is the successor-in-interest to Coinbra Frutesp. As a result, on May 2, 2011, we requested that Louis Dreyfus address the four factors noted above (i.e., management, production facilities for the subject merchandise, supplier relationships, and customer base) in order to determine whether Louis Dreyfus is indeed the successor-in-interest to Coinbra Frutesp.

On May 24, 2011, Louis Dreyfus submitted its response to the Department's request. In this submission, Louis Dreyfus provided evidence that Coinbra Frutesp Agroindustrial Ltda. (Coinbra Frutesp Ag.), the wholly owned subsidiary of Coinbra Frutesp and producer of subject merchandise, underwent a series of corporate restructurings, including changes to the company's name. According to Louis Dreyfus, these name changes had no effect on the company's operations. Louis Dreyfus explained that there were no significant changes to Coinbra Frutesp Ag's management, production facilities for the subject merchandise, supplier relationships, or customer base as a result of the change in corporate structure.

On August 22, 2011, we asked further questions and requested additional documentation from Louis Dreyfus to support its statements that the name changes did not affect its

management, production facilities, supplier relationships, and customer base. Louis Dreyfus provided this information on September 13, 2011.

Based on our analysis of Louis Dreyfus' May 24, 2011, and September 13, 2011, submissions, we preliminarily find that Coinbra Frutesp Ag's organizational structure, management, production facilities, supplier relationships, and customers have remained largely unchanged from the time of the OJ order. Further, we preliminarily find that Louis Dreyfus operates as the same business entity as Coinbra Frutesp Ag with respect to the production and sale of OJ. Thus, we preliminarily find that Louis Dreyfus is the successor-in-interest to Coinbra Frutesp and, as a consequence, the Department finds Louis Dreyfus' U.S. sales of FCOJ would be subject merchandise in this proceeding.<sup>8</sup> For further discussion, see the March 30, 2012, memorandum to James Maeder, Office Director, from Elizabeth Eastwood, Senior Analyst, entitled, "Successor-In-Interest Determination for Coinbra Frutesp S.A./Coinbra Frutesp Agroindustrial Ltda. and Louis Dreyfus Commodities Agroindustrial S.A. in the 2010-2011 Antidumping Duty Administrative Review of Certain Orange Juice from Brazil."

#### Preliminary Determination of No Shipments

As noted in the "Background" section above, Montecitrus indicated that it had no shipments of subject merchandise to the United States during the POR. The Department subsequently confirmed with CBP the no-shipment claim made by Montecitrus. Because the evidence on the record indicates that Montecitrus did not export subject merchandise to the United States during the POR, we preliminarily determine that Montecitrus did not have any reviewable transactions during the POR.

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<sup>8</sup> Louis Dreyfus reported making only U.S. sales of NFC during the POR.

Since the implementation of the 1997 regulations, our practice concerning no-shipment respondents had been to rescind the administrative review if the respondent certifies that it had no shipments and we have confirmed through our examination of CBP data that there were no shipments of subject merchandise during the POR. See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27393 (May 19, 1997). As a result, in such circumstances, we normally instruct CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry.

In our May 6, 2003, “automatic assessment” clarification, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003) (Assessment Policy Notice).

Because “as entered” liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by Montecitrus, and exported by other parties, at the all-others rate. See, e.g., Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review, 75 FR 26922 (May 13, 2010), unchanged in Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review, 75 FR 56989 (Sept. 17, 2010). In addition, the Department finds that it is more consistent with the May 2003 clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to Montecitrus and issue

appropriate instructions to CBP based on the final results of the review. See the “Assessment Rates” section of this notice below.

#### Comparisons to Normal Value

To determine whether sales of OJ by Cutrale, Fischer, and Louis Dreyfus to the United States were made at less than NV, we compared constructed export price (CEP) to the NV, as described in the “Constructed Export Price” and “Normal Value” sections of this notice.

Pursuant to 19 CFR 351.414(c)(2) and (e)(1), we compared the CEPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the “Cost of Production Analysis” section below.

#### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Cutrale, Fischer, and Louis Dreyfus, and covered by the description in the “Scope of the Order” section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared U.S. sales of OJ to sales of OJ in the home market within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the last U.S. sale. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: product type and organic designation. Where there were no sales of identical or similar merchandise, we made product comparisons using CV, as

discussed in the “Calculation of Normal Value Based on Constructed Value” section below. See section 773(a)(4) of the Act.

#### Constructed Export Price

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. In this case, we are treating all of Cutrale’s and Fischer’s U.S. sales as CEP sales because they were made in the United States by their U.S. affiliates on behalf of the respondents, within the meaning of section 772(b) of the Act.

Regarding Louis Dreyfus, this respondent reported its U.S. sales as export price (EP) transactions because it stated that Louis Dreyfus in Brazil, not its U.S. affiliate, negotiated the sales with the U.S. customer. However, because the document relied upon by Louis Dreyfus to support its claim does not establish the material terms of sale and the U.S. affiliate, Louis Dreyfus Citrus Inc. (LDCI), is identified as the seller on the commercial invoice to the U.S. customer, we are treating all of Louis Dreyfus’s U.S. sales as CEP transactions in accordance with our practice.

#### A. Cutrale

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. For sales made pursuant to futures contracts, we adjusted the reported gross unit price (i.e., the notice price) to include gains and losses incurred on the futures contract which resulted in the shipment of subject merchandise. Additionally, for certain sales made pursuant to futures contracts which were noticed prior to the POR, but were shipped and invoiced during the POR,

we adjusted the reported date of sale for these transactions to base it on the invoice date. Where appropriate, we also made adjustments for rebates.

In addition, we made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act. These included, where appropriate, foreign inland freight; foreign warehousing expenses; foreign brokerage and handling expenses; ocean freight; U.S. brokerage and handling (offset by customer-specific reimbursements); U.S. customs duties, harbor maintenance fees and merchandise processing fees (offset by U.S. duty drawback and customs duty reimbursements); U.S. inland freight expenses; and U.S. warehousing expenses. We capped reimbursements for brokerage and handling expenses by the amount of brokerage and handling expenses incurred on the subject merchandise, in accordance with our practice.<sup>9</sup> We also capped U.S. customs duty reimbursements, as well as U.S. duty drawback, by the amount of U.S. customs duties incurred on the subject merchandise, in accordance with our practice. *Id.*

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, commissions, imputed credit expenses, and repacking expenses (offset by pallet and drum revenue)), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses). We capped U.S. pallet revenue and drum

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<sup>9</sup> See, e.g., Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 46584 (Aug. 11, 2008) (2005-2007 OJ from Brazil), and accompanying Issues and Decision Memorandum at Comment 7; Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, 74 FR 40167 (Aug. 11, 2009) (2007-2008 OJ from Brazil), and accompanying Issues and Decision Memorandum at Comment 3; Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999 (Aug. 18, 2010) (2008-2009 OJ from Brazil), and accompanying Issues and Decision Memorandum at Comment 2; and Certain Orange Juice From Brazil: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 76 FR 19315, 19318 (Apr. 7, 2011) (2009-2010 OJ from Brazil Preliminary Results), unchanged in Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, Determination Not To Revoke Antidumping Duty Order in Part, and Final No Shipment Determination, 76 FR 50176 (Aug. 12, 2011) (2009-2010 OJ from Brazil).

revenue by the amount of repacking expenses, in accordance with our practice. Id. In addition, we recalculated inventory carrying costs using the total manufacturing costs, adjusted as noted in the “Calculation of Cost of Production” section of this notice, below.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Cutrale and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

For further discussion of the changes made to Cutrale’s reported U.S. sales data, see the March 30, 2012, memorandum from Blaine Wiltse, Senior Analyst, to the File, entitled “Calculation Adjustments for Sucocitríco Cutrale Ltda. for the Preliminary Results” (Cutrale Calculation Memo).

B. Fischer

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. In addition, we made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight expenses; foreign warehousing expenses; foreign brokerage and handling expenses; ocean freight expenses (offset by bunker fuel adjustments); marine insurance expenses; U.S. brokerage and handling expenses; U.S. customs duties, harbor maintenance fees and merchandise processing fees (offset by U.S. duty drawback); U.S. inland freight expenses; and U.S. warehousing expenses. We capped reimbursements for U.S. customs duties, as well as U.S. duty drawback, by the amount of U.S. customs duties incurred on the subject merchandise, in accordance with our practice. See 2005-2007 OJ from Brazil at Comment 7; 2007-2008 OJ from Brazil at Comment 3; and 2008-2009 OJ from Brazil at Comment 2. We also capped bunker fuel adjustments by the amount of

ocean freight expenses incurred on the subject merchandise, in accordance with our practice. Id. Further, we determined that the international freight expenses provided by Fischer's affiliated freight provider were not at arm's length. Therefore, for all sales shipped by Fischer's affiliate, we assigned the international freight rate charged by Fischer's affiliate to an unaffiliated party to restate them on an arm's-length basis. For further discussion, see the March 30, 2012, memorandum to the file from Hector Rodriguez, Analyst, entitled "Calculation Adjustments for Fischer S.A. Comercio, Industria, and Agricultura for the Preliminary Results" (Fischer Calculation Memo).

In accordance with sections 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (i.e., additional processing expenses, imputed credit expenses, and repacking expenses), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Fischer and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

C. Louis Dreyfus

On February 9, 2012, we issued a supplemental questionnaire to Louis Dreyfus in which we requested that Louis Dreyfus provide commercial invoices and ocean freight invoices for all exports of FCOJ or NFC from Brazil by its affiliated exporter, Louis Dreyfus Citrus Trading Ltda. (Louis Dreyfus Trading), to the United States during the month of March. In its response, Louis Dreyfus stated that it did not have any other sales of subject merchandise to the United

States during March 2011 (i.e., outside the POR). Because 1) Louis Dreyfus did not respond directly to the Department's question; and 2) there appears to exist contradictory information<sup>10</sup> on the record of this proceeding, we intend to issue an additional supplemental questionnaire to Louis Dreyfus to allow it to address this issue. We will consider this information for purposes of our final results. However, if Louis Dreyfus fails to respond adequately to this subsequent request for information, for purposes of the final results, we may consider whether the application of facts available is warranted, pursuant to section 776(a) of the Act.

Regarding the U.S. sales that Louis Dreyfus did report, Louis Dreyfus used the date of an email order confirmation from its U.S. customer as the date of sale for its U.S. sales. The Department's regulations at 19 CFR 351.401(i) provide that the Department may use a date other than the date of invoice if the different date better reflects the date on which the material terms of sale are established. In this instance, we find that the essential terms of sale are not set as of the date of the email between the parties because the quantity and entry date changed after that date. Therefore, we have used as the date of sale the date that Louis Dreyfus shipped its merchandise from Brazil because this date is earlier than the date LDCI issued the commercial invoice and better reflects the date on which the material terms of sale were established, in accordance with our practice<sup>11</sup> and 19 CFR 351.401(i). For further discussion of this issue, see the March 30, 2012, memorandum from Elizabeth Eastwood, Senior Analyst, to the File, entitled "Calculation

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<sup>10</sup> Because this contradictory information is proprietary in nature, we cannot discuss it here.

<sup>11</sup> See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review, 72 FR 71357 (Dec. 17, 2007) and accompanying Issues and Decision Memorandum at Comment 1; Certain Steel Concrete Reinforcing Bars from Turkey: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review and Notice of Intent to Revoke in Part, 72 FR 25253, 25256 (May 4, 2007), unchanged in Certain Steel Concrete Reinforcing Bars From Turkey: Final Results of Antidumping Duty Administrative Review and New Shipper Review and Determination To Revoke in Part, 72 FR 62630 (Nov. 6, 2007); and Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand, 69 FR 76918 (Dec. 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

Adjustments for Louis Dreyfus Commodities Agroindustrial S.A. for the Preliminary Results” (Louis Dreyfus Sales Calculation Memo).

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for billing adjustments. In addition, we made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act. These included, where appropriate, foreign inland freight expenses; foreign brokerage and handling expenses; ocean freight expenses; U.S. brokerage and handling expenses (offset by customer-specific reimbursements); and U.S. customs duties (offset by customs duty reimbursements). We included certain U.S. brokerage and handling expenses for which Louis Dreyfus was not reimbursed by its U.S. customer but were omitted from the U.S. sales listing. See Louis Dreyfus Sales Calculation Memo for further discussion. We capped reimbursements for brokerage and handling expenses by the amount of brokerage and handling expenses incurred on the subject merchandise, in accordance with our practice. See, e.g., 2005-2007 OJ from Brazil at Comment 7; 2007-2008 OJ from Brazil at Comment 3; and 2008-2009 OJ from Brazil at Comment 2. We also capped U.S. customs duty reimbursements by the amount of U.S. customs duties incurred on the subject merchandise, in accordance with our practice. Id.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (i.e., imputed credit expenses), and indirect selling expenses (including other indirect selling expenses). Because Louis Dreyfus did not report indirect selling expenses for LDCI, we calculated these expenses using the audited financial statements for LDCI’s parent company contained in Louis Dreyfus’ May 24, 2011, response. For further discussion of this calculation, see the Louis Dreyfus Sales Calculation Memo. We intend to

issue an additional supplemental questionnaire to request that Louis Dreyfus provide a calculation of LDCI's indirect selling expenses. We will consider this information for purposes of our final results. However, if Louis Dreyfus fails to respond adequately to this subsequent request for information, for purposes of the final results, we may consider whether the application of facts available is warranted, pursuant to section 776(a) of the Act.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Louis Dreyfus and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

#### Normal Value

##### A. Home Market Viability and Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

We determined that the aggregate volume of home market sales of the foreign like product for each respondent was sufficient to permit a proper comparison with its U.S. sales of the subject merchandise.

##### B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not

sufficient, condition for determining that there is a difference in the stages of marketing. Id., see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa, 62 FR 61731, 61732 (Nov. 19, 1997) (Plate from South Africa). In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (i.e., the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (i.e., NV based on either home market or third country prices),<sup>12</sup> we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See Micron Technology, Inc. v. United States, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (i.e., no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See Plate from South Africa, 62 FR at 61732-33.

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<sup>12</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative (SG&A) expenses, and profit for CV, where possible.

In this administrative review, we obtained information from each respondent regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

1. Cutrale

Cutrale reported that it made CEP sales through one channel of distribution in the United States (i.e., sales via an affiliated reseller) and thus the selling activities it performed did not vary by the type of customer. We examined the selling activities performed for this channel and found that Cutrale performed the following selling functions: sales forecasting, order input/processing, freight and delivery, packing, quality guarantees, and maintaining inventory at the port of exportation.

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. See 2008-2009 OJ from Brazil at Comment 7; and Certain Frozen Warmwater Shrimp From India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review, 74 FR 9991, 9996 (Mar. 9, 2009), unchanged in Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 33409 (July 13, 2009). Based on these selling function categories, we find that Cutrale performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for U.S. sales. Because all sales in the United States are made through a single distribution channel and the selling activities did not differ within this channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Cutrale reported that it made sales through one channel of distribution (i.e., direct sales to soft drink manufacturers). We examined the selling activities performed for home market sales and found that Cutrale performed the following selling functions: sales forecasting, direct sales personnel, order input/processing, advertising, freight and delivery, packing, quality guarantees, after-sales services, and inventory maintenance at the factory. Accordingly, based on the four selling function categories listed above, we find that Cutrale performed sales and marketing, freight and delivery, inventory maintenance and warehousing, and warranty and technical support for home market sales. Because all home market sales are made through a single distribution channel, and the selling activities did not differ within this channel, we preliminarily determine that there is one LOT in the home market for Cutrale.

Finally, we compared the CEP LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers do not differ significantly. Specifically, we found that the differences were limited to the following activities: 1) Cutrale performed limited, general image advertising in the home market; 2) Cutrale entered orders into the company's computer system for home market sales based on orders placed by customers, while it generated sales documents for sales to its U.S. affiliate based on a general shipping schedule; 3) Cutrale has direct sales personnel assigned to servicing its home market customers while employing an export sales office whose staff is assigned to service all export market customers, including U.S. customers; 4) Cutrale provided limited technical assistance and after-sale services to home market customers during the POR; and 5) Cutrale provides quality guarantees directly to its home market customers, while it provides similar guarantees for its U.S. sales through its U.S. affiliate.

According to 19 CFR 351.412(c)(2), the Department will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Therefore, because we determine that substantial differences in Cutrale's selling activities do not exist across markets, we determine that sales to the U.S. and home markets during the POR were made at the same LOT. As a result, neither a LOT adjustment nor a CEP offset is warranted for Cutrale. This determination is consistent with findings in previous reviews.<sup>13</sup> See, e.g., 2005-2007 OJ from Brazil at Comment 5; 2007-2008 OJ from Brazil at Comment 2; 2008-2009 OJ from Brazil at Comment 7; and 2009-2010 OJ from Brazil Preliminary Results, 76 FR at 19319, unchanged in 2009-2010 OJ from Brazil.

## 2. Louis Dreyfus

Louis Dreyfus made CEP sales<sup>14</sup> through one channel of distribution in the United States (i.e., sales via an affiliated reseller) and, thus, the selling activities it performed did not vary by the type of customer. We examined the selling activities performed for this channel and found that Louis Dreyfus performed the following selling functions: customer contact and price negotiation; order input/processing; employing direct sales personnel; providing guarantees; providing inventory maintenance; and arranging for freight. Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and

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<sup>13</sup> This finding is also consistent with Cutrale's statement that there were no significant differences between the sales process that it performed during the current POR and that which it performed in both markets during the previous segment of the proceeding. See Cutrale's supplemental section A response, submitted on September 15, 2011, at page 1.

<sup>14</sup> Louis Dreyfus reported that its U.S. sales were EP, not CEP, sales. However, as noted in the "Constructed Export Price" section of this notice, above, we have reclassified Louis Dreyfus' U.S. sales as CEP sales for purposes of the preliminary results.

delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support.

Accordingly, based on these selling function categories, we find that Louis Dreyfus performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Louis Dreyfus reported that it made sales through two channels of distribution to two types of customers (i.e., large soft drink manufacturers/industrial juice producers and small soft drink manufacturers). However, we find that the selling activities it performed did not vary significantly by the channel of distribution or the type of customer. Therefore, we have considered the selling functions for all customers in the aggregate. We examined the selling activities performed for home market sales, and found that Louis Dreyfus performed the following selling functions:<sup>15</sup> customer contact and price negotiation; order input/processing; employing direct sales personnel; providing guarantees; and packing. In addition, for certain home market sales, Louis Dreyfus also indicated that it performed sales forecasting and inventory maintenance. Accordingly, based on the selling function categories listed above, we find that Louis Dreyfus performed sales and marketing and inventory maintenance and warehousing for home market sales. Because all home market sales are made through a single distribution channel, we preliminarily determine that there is one LOT in the home market for Louis Dreyfus.

Finally, we compared the CEP LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers do not differ significantly. Therefore,

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<sup>15</sup> In its selling functions chart, Louis Dreyfus indicated that it performed freight and delivery for certain home market sales; however, it did not report these expenses for any home market sales. Therefore, we are not considering this selling function for purposes of our analysis.

we determine that sales to the U.S. and home markets during the POR were made at the same LOT, and as a result, neither a LOT adjustment nor a CEP offset is warranted for Louis Dreyfus.

### 3. Fischer

Because all of Fischer's home market sales failed the cost test during the POR, we based NV on CV. When NV is based on CV, the NV LOT is that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from Brazil, 69 FR 47081 (Aug. 4, 2004), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil, 69 FR 76910 (Dec. 23, 2004). In accordance with 19 CFR 351.412(d), the Department will make its LOT determination under paragraph (d)(2) of this section on the basis of sales of the foreign like product by the producer or exporter. We based the selling expenses and profit for Fischer on the weighted-average selling expenses incurred and profits earned by the other respondents in the proceeding (i.e., Cutrale and Louis Dreyfus). Thus, as described below, we attempted to determine the LOT of the sales from which we derived selling expenses and profit for CV.

Fischer reported that it made CEP sales through one channel of distribution in the United States (i.e., sales via an affiliated reseller) and, thus, the selling activities it performed did not vary by the type of customer. We examined the selling activities performed for this channel and found that Fischer performed the following selling functions: customer contact and price negotiation; order processing; arranging for freight and the provision of customs clearance/brokerage services; and inventory maintenance. Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and

delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support.

Accordingly, based on these selling function categories, we find that Fischer performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel and the selling activities did not differ within this channel, we preliminarily determine that there is one LOT in the U.S. market.

As noted above, based on the four selling function categories, we find that Cutrale performed sales and marketing, freight and delivery, inventory maintenance and warehousing, and warranty and technical support for its home market sales. In addition, we find that Louis Dreyfus performed sales and marketing and inventory maintenance and warehousing for its home market sales. Because Cutrale and Louis Dreyfus did not perform the same selling functions in the home market, we could not determine the LOT of the sales from which we derived selling expenses and profit for CV. As a result, we could not compare the CEP LOT to the home market LOT. Therefore, we did not make a LOT adjustment or CEP offset to NV for Fischer. See the “Calculation of Normal Value Based on Constructed Value” section of this notice, below.

C. Affiliated-Party Transactions and Arm’s-Length Test

During the POR, Cutrale and Louis Dreyfus made sales in the home market to affiliated parties, as defined in section 771(33) of the Act. Consequently, we tested these sales to ensure that they were made at arm’s-length prices, in accordance with 19 CFR 351.403(c). To test whether the sales to the affiliates were made at arm’s-length prices, we compared the unit prices of sales to the affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing expenses. Pursuant to 19 CFR 351.403(c) and in accordance with the

Department's practice, where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same LOT, we determined that the sales made to the affiliated party were at arm's-length. See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade, 67 FR 69186 (Nov. 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 and 102 percent in order for sales to be considered in the ordinary course of trade and used in the NV calculation). Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade. See section 771(15) of the Act and 19 CFR 351.102(b).

D. Cost of Production Analysis

We found that Cutrale and Fischer made sales below the COP in the 2008-2009 administrative review, the most recently completed segment of this proceeding as of the date of initiation of this review, and such sales were disregarded. See 2008-2009 OJ from Brazil. Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Cutrale and Fischer made home market sales at prices below the cost of producing the merchandise in the current POR.

Moreover, on July 18, 2011, the petitioners alleged that Louis Dreyfus made sales in the home market, during the POR that were below the COP. Based on our analysis of the allegation made by the petitioner, we found that Louis Dreyfus' home market sales which fell below the COP were representative of the broader range of sales which may be used as a basis for NV. Therefore, we determined, on this basis as well, that there were reasonable grounds to believe or suspect that Louis Dreyfus' sales of OJ in the home market were made at prices below its COP.

Accordingly, pursuant to section 773(b) of the Act, we initiated a sales-below-cost investigation to determine whether Louis Dreyfus' sales were made at prices below its COP. See Louis Dreyfus Cost Investigation Memo.

We examined the cost data for Cutrale, Fischer, and Louis Dreyfus and determined that our quarterly cost methodology is not warranted and, therefore, we have applied our standard methodology of using annual costs based on the reported data, adjusted as described below.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondents' COPs based on the sum of their costs of materials and conversion for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses (see "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses).

a. Cutrale

The Department relied on the COP data submitted by Cutrale in its most recently submitted cost database for the COP calculation, except in the following instances:

- i. We used Cutrale's home market actual brix level data to adjust Cutrale's home market costs to ensure that these are stated on a pounds-solid basis using actual brix; and
- ii. We revised Cutrale's calculation of its G&A expense rate to exclude from the numerator of the calculation the change in fair value of biological assets (i.e., orange trees). We intend to issue an additional supplemental questionnaire to Cutrale to allow it to provide further information on the valuation of these assets.

For further discussion of this adjustment, see the Cutrale Calculation Memo.

b. Fischer

The Department relied on the COP data submitted by Fischer in its first cost database, rather than its cost database submitted in December 2011, because Fischer made certain unexplained adjustments to its reported costs. We intend to issue an additional supplemental questionnaire to Fischer to allow it to provide further information regarding these adjustments. We adjusted Fischer's reported cost data as follows:

- i. We adjusted Fischer's financial expense calculation to disallow long term interest income and to include the total amount of Fischer's realized hedge results as recorded in Fischer's income statement.
- ii. We revised Fischer's G&A expense ratio calculation to include "other" operating expenses related to provisions and disposal of fixed assets.
- iii. In accordance with the transactions disregarded rule (i.e., section 773(f)(2) of the Act) we adjusted Fischer's cost of manufacturing (COM) to reflect the market value for the sale of certain by-products to its affiliated trade company.

For further discussion of these adjustments, see the Fischer Calculation Memo.

c. Louis Dreyfus

The Department relied on the COP data submitted by Louis Dreyfus in its most recently submitted cost database for the COP calculation, except in the following instances:

- i. We revised the denominator of Louis Dreyfus' reported G&A expense ratio to reflect the company-wide fiscal year 2010 cost of sales reflected on Louis Dreyfus' audited income statement. We adjusted the cost of sales for by-product revenue, packing expenses, and the difference between Louis Dreyfus' growing season costs reported to the Department and the growing season costs recorded in the company's normal books and records. To

calculate these adjustments, we determined the relative percentage of each type of expense or adjustment to Louis Dreyfus' fiscal year 2010 cost of sales. We then applied the percentages to the parent company's fiscal year 2010 cost of sales to determine the adjustment to the denominator.

- ii. We revised the numerator of Louis Dreyfus' reported financial expense ratio to include only that portion of the claimed short-term interest income offset that the record indicates was generated by short-term interest bearing assets related to working capital. We also revised the denominator of the financial expense ratio (i.e., Louis Dreyfus' parent company's cost of sales) to reflect the same adjustments made to G&A (i.e., by-product revenue, packing expenses, and growing season cost differences), as detailed above.

For further discussion of these adjustments, see the March 30, 2012, memorandum from LaVonne Clark to Neal M. Halper entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Louis Dreyfus Citrus Inc. and Louis Dreyfus Commodities Agroindustrial S.A."

## 2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sales prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of billing adjustments, where appropriate) were exclusive of any applicable movement charges, direct and indirect selling expenses and packing expenses.

### 3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act: 1) whether, within an extended period of time, such sales were made in substantial quantities; and 2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent's home market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act, and 2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Cutrale's and Louis Dreyfus', and all of Fischer's, home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis. We used the remaining sales as the basis for determining NV for Cutrale and Louis Dreyfus in accordance with section 773(b)(1) of the Act.

For those U.S. sales of subject merchandise for which there were no home market sales in the ordinary course of trade, we compared CEPs to CV in accordance with section 773(a)(4) of the Act. See the “Calculation of Normal Value Based on Constructed Value” section below.

E. Calculation of Normal Value Based on Comparison Market Prices

1. Cutrale

For Cutrale, we calculated NV based on ex-factory prices to unaffiliated customers. We made adjustments, where appropriate, to the starting price for billing adjustments and interest revenue, in accordance with 19 CFR 351.401(c). We have treated Cutrale’s home market interest revenue as a price adjustment, in accordance with 19 CFR 351.401(c) and 351.102(b). We also made adjustments, where appropriate, to the starting price for Brazilian taxes, in accordance with section 773(a)(6)(B)(iii) of the Act.

In addition we made deductions pursuant to section 773(a)(6)(C) of the Act for home market credit expenses. We recalculated Cutrale’s home market credit expenses to base the calculation on the gross unit price, inclusive of home market interest revenue, but net of taxes and billing adjustments. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission.

We recalculated home market inventory carrying costs using the manufacturing costs reported in Cutrale’s most recent cost response, adjusted as noted in the “Calculation of Cost of Production” section of this notice, above. For further discussion of these adjustments, see the Cutrale Calculation Memo.

We deducted home market packing costs and added U.S. packing costs, where appropriate, in accordance with sections 773(a)(6)(A) and (B) of the Act.

Finally, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

2. Louis Dreyfus

We calculated NV based on delivered prices to unaffiliated customers. We made adjustments, where appropriate, to the starting price for billing adjustments in accordance with 19 CFR 351.401(c). We also made adjustments, where appropriate, to the starting price for Brazilian taxes, in accordance with section 773(a)(6)(B)(iii) of the Act.

In addition, we made deductions pursuant to section 773(a)(6)(C) of the Act for home market credit expenses. We deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

Finally, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

F. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Accordingly, for all of Fischer's sales and for certain sales made by Louis Dreyfus, we based NV on CV because there were no home market sales in the ordinary course of trade that could be properly compared to those U.S. sales.

Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for SG&A expense (including financing expenses), profit, and U.S. packing costs. We calculated respondents'

materials, G&A, and financing costs as described in the “Cost of Production Analysis” section, above.

For comparisons to CEP, we deducted from CV the respondents’ weighted-average home market direct selling expenses.

Because Fischer did not have home market sales in the ordinary course of trade, the Department cannot determine profit under section 773(e)(2)(A) of the Act, which requires sales by the respondent in question in the ordinary course of trade in a comparison market. Likewise, because Fischer does not have sales of any product in the same general category of products as the subject merchandise, we are unable to apply alternative (i) of section 773(e)(2)(B) of the Act. Alternative (ii) of section 773(e)(2)(B) of the Act allows for the Department to use the weighted average of the actual amounts incurred and realized by exporters or producers that are subject to the investigation or review (other than the exporter or producer described in clause (i)) for SG&A expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country. Further, because there are two other respondents in this administrative review, the Department is applying alternative (ii) and has based Fischer’s CV selling expenses and profit rate on the weighted average of the data of Cutrale and Louis Dreyfus. For further discussion, see the Fischer Calculation Memo.

#### Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

### Preliminary Results of the Review

We preliminarily determine that weighted-average dumping margins exist for the respondents for the period March 1, 2010, through February 28, 2011, as follows:

<u>Manufacturer/Exporter</u>	<u>Percent Margin</u>
Sucocitricon Cutrale, S.A.	2.81
Fischer S.A. Comercio, Industria, and Agricultura	8.73
Louis Dreyfus Commodities Agroindustrial S.A.	22.03
Montecitrus Trading S.A.	*

/\*/ No shipments or sales subject to this review.

### Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. See 19 CFR 351.224(b). Pursuant to 19 CFR 351.309, interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the time limit for filing the case briefs. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities. See 19 CFR 351.309(c)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). An electronically filed document must be received successfully in its entirety by the Department's electronic

records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice. Requests should contain: 1) the party's name, address and telephone number; 2) the number of participants; and 3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs and rebuttal briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in the case briefs and rebuttals, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

#### Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

We will calculate importer-specific ad valorem duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above de minimis. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is de minimis. See 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its “automatic assessment” regulation on May 6, 2003. See Assessment Policy Notice. This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. See Assessment Policy Notice for a full discussion of this clarification.

#### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: 1) the cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, de minimis within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; 2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters of NFC, and for FCOJM produced and/or exported by Cargill Citrus Limitada will continue to be 16.51 percent, the all-others rate made effective by

the LTFV investigation. See OJ Order, 71 FR at 12184. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

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Paul Piquado  
Assistant Secretary  
for Import Administration

\_\_\_March 30, 2012\_\_\_  
(Date)